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September 14, 2006

Mr. Jerry Sanders
Monroe County
P.O. Box 1026
Key West, FL 33041-1026

Re: Revised Section 380 Agreement, Boca Developers, LLC

Dear Jerry:

Attached is a revised copy of the Section 380 agreement for Boca Developers, LLC. The only clarification is of the record owners of the parcels, located in the fourth and fifth whereas clauses. There is no change in the substance of the agreement, as these entities are wholly owned by Boca Developers, LLC.

If you have any questions, please feel free to contact me. Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Amor de la Fuente" or similar, followed by "for BDF".

Bob de la Fuente

cc: Carl Cataudella
Lysa Migliorati

**MEMORANDUM OF AGREEMENT BETWEEN THE DEPARTMENT OF
COMMUNITY AFFAIRS, MONROE COUNTY, AND BOCA DEVELOPERS**
Pursuant to Section 380.032(3), Florida Statutes

THIS SECTION 380.032 AGREEMENT is entered into between the **Department of Community Affairs**, an agency of the State of Florida (hereinafter referred to as “DCA” or “Department”), **Boca Developers, LLC** (hereinafter referred to as “BOCA”), and **Monroe County**, a political subdivision of the State of Florida (hereinafter referred to as “County”), pursuant to the terms and conditions herein and § 380.032(3), *Florida Statutes*.

WHEREAS, Monroe County, Florida includes within its boundaries all of the Florida Keys and is known as an Area of Critical State Concern, as designated under Sections 380.05, *Florida Statutes*, and Chapter 28-36, *F.A.C.*;

WHEREAS, the DCA is the state land planning agency having the power and duty to exercise general supervision of the administration and enforcement of Chapter 380, *Florida Statutes*, the Environmental Land and Water Management Act (the “Act”), which includes provisions relating to areas of critical state concern;

WHEREAS, DCA is authorized by § 380.032(3), *Florida Statutes*, to enter into an agreement with any landowner, developer or other governmental agency as may be necessary to effectuate the provisions and purposes of the Act, or any related rule;

WHEREAS, Sun Vista Marine Group, LLC is the owner of a parcel of real property known as Rowell’s Marina in unincorporated Monroe County, Florida, comprising approximately 8.3 acres, with an approximate street address of 104450 Overseas Highway, Key Largo, Florida, 33037, the legal description of which is attached and incorporated herein as Exhibit A (“Rowell's Marina”);

WHEREAS, Upper Keys Acquisitions, LLC is the owner of a parcel of real property known as Seahorse Trailer Park located in Big Pine Key, Monroe County, Florida, with an approximate street address of 701 County Road, Big Pine Key, the legal description of which is attached as Exhibit B (“Seahorse”);

WHEREAS, Sun Vista Marine Group, LLC and Upper Keys Acquisitions, LLC are both wholly owned by petitioner BOCA, and shall hereinafter be collectively referred to as BOCA;

WHEREAS, the Petitioner proposes to transfer Rogo-exempt Equivalent Dwelling Units and their associated Transferable Development Rights (“TDR”) from Seahorse to Rowell’s

Marina and any property adjacent to and contiguous with Rowell's Marina that may be acquired by BOCA at a future date (collectively, "Receiver Site") in Key Largo;

WHEREAS, the Seahorse parcel is contiguous with an area identified by the Big Pine Habitat Conservation Plan as the Sands Corridor where development potential has been restricted due to the critical importance of maintaining the corridor for the Florida Key Deer;

WHEREAS, BOCA shall restore a corridor, creating an ninety-five thousand, three hundred eighty-two (95,382) square foot conservation easement, across fifty-four (54) percent of the Seahorse parcel and restore or cause to be restored the scarified areas of the conservation easement to a pine hammock at BOCA's cost to facilitate the migration of the Florida Key Deer, a Threatened and Endangered Species;

WHEREAS, it is a public benefit to restore the Sands Corridor on Big Pine Key for use of the Florida Key Deer and to contribute to the County the fee title to be counted as land acquisition required by the Habitat Conservation Plan in its annual report to U.S. Fish and Wildlife Services;

WHEREAS, BOCA shall donate the Seahorse parcel, with a current value of approximately \$8 Million, to the Monroe County Land Authority or other appropriate land trust to be operated or redeveloped as affordable housing in perpetuity, as required by Section 9.5-266(b);

WHEREAS, BOCA is willing to construct or cause to be constructed up to thirty-nine (39) affordable housing units at cost for the County at the Seahorse property in the Lower Keys, utilizing affordable housing allocations;

WHEREAS, BOCA shall donate sixty (60) Transferable Development Rights to the County associated with the Seahorse property,;

WHEREAS, BOCA shall also donate twenty (20) market-rate ROGO-exempt units to the County;

WHEREAS, the Petitioner's proposal will lessen hurricane evacuation loads from the Lower Keys by relocating dwelling units approximately 100 miles closer to the mainland;

WHEREAS, the transfer of units off Big Pine will provide the ability to replace up to 91 units on Big Pine , with no clearing of habitat, that will not be subject to the cap on development within the Incidental Take permit;

WHEREAS, BOCA's proposal will decrease trip generation on U.S. 1 at Big Pine Key where the Level of Service standard is currently operating below the adopted Level of Service standard and the trips associated with the redevelopment at Key Largo will occur on a segment of US Highway one that currently operates at a level of service A;

WHEREAS, the Petitioner proposes to use the Receiver Site, for residential development; consistent with the density established in the Monroe County Comprehensive Plan and Land Development Regulations;

WHEREAS, the Receiver Site is shown on the Monroe County Existing Conditions Map as Disturbed, Tier III lands, targeted for infill development;

WHEREAS, the Receiver Site, if evaluated by the Monroe County Building Permit Allocation System, would not receive negative environmental points under 9.5-122.3 (7)-Habitat Protection, (8) Threatened or endangered animal species; or (9) Critical Habitat Areas;

WHEREAS, there exist only thirty (30) wastewater pump-out stations in the Florida Keys, with none on the bay-side north of Founder's Park;

WHEREAS, there is currently no public access to the marina facilities at the Receiver Site;

WHEREAS, the Monroe County Comprehensive Plan at Policy 101.5.8 provides: "Monroe County may develop a program called Transfer of ROGO Exemptions ("TRE") that would allow for the transfer off site of dwelling units, hotel rooms, campground/recreational vehicle spaces and/or mobile homes to another site in the same ROGO sub-area, provided that they are lawfully existing and can be accounted for in the County's hurricane evacuation model." In addition, the Receiver Site shall be located within a Tier III area outside a designated Special Protection Area and for a Receiver Site on Big Pine and No Name Key, the sending site shall also be located on one of these two islands;

WHEREAS, Policy 101.2.13 of the Monroe County Comprehensive Plan limits the number of residential permits issued in the county to the number of nutrient reduction credits earned within the same unincorporated ROGO area.

WHEREAS, Policy 101.2.13 provides the legislative intent to end the nutrient reduction program in July, 2005 if the administration commission determines that Monroe County has made substantial progress in meeting Work Program goals, and provides for the sharing of nutrient credits across local government jurisdictions and sub-planning areas;

WHEREAS, residential units that were lawfully established prior to the enactment of the Rate of Growth ordinance and their replacements are exempt from providing nutrient reduction credits.

WHEREAS the TRE's proposed to be moved are exempt from the Nutrient Credit Program;

WHEREAS, BOCA negotiated with the County the terms of an agreement to resolve vested rights and other development issues that were the subject of protracted discussions between the County and BOCA;

WHEREAS, the goal of the parties is to seek a means to preserve affordable housing by identifying a plan that would create workforce housing units and recognize certain remaining market rate units on the Property;

WHEREAS, it is in the public interest and planning initiatives that the Seahorse property be developed or maintained as workforce housing, rather than market rate units;

WHEREAS, the County recognizes that the proposed development of Rowell's Marina and the development of affordable/workforce housing at the Seahorse property constitutes a complex undertaking which involves numerous interdependent commitments;

WHEREAS, it is in the public interest and consistent with County planning initiatives that private lands capable of supporting workforce housing developments be purchased and brought into public ownership when possible;

WHEREAS, the County recognizes that to achieve this public purpose it is necessary to provide Rate of Growth Ordinance rights (ROGO units) as part of the purchase price incentive to private landowners in the position of BOCA; and

WHEREAS, the terms of this Agreement further, facilitate and satisfy the Principles for Guiding Development, as set forth in Sec. 380.0552(7), Fla. Stat.

NOW, THEREFORE, in consideration of the mutual covenants and the terms and conditions set forth hereafter, the County, BOCA and DCA agree as follows:

1. **Incorporation of Recitals.** All of the foregoing recitals are incorporated into this Agreement.

2. **Development Agreements**

2.1. **ROGO-Exempt Equivalent Dwelling Units & Transferable Development Rights ("TDR's").** The parties agree that the Seahorse property that is subject of this agreement, based on the most accurate historical information available, has one hundred thirty (130) ROGO-Exempt Equivalent Dwelling Units ("TRE's") allocated to the Seahorse property. Further, the parties agree that the Seahorse Property has the associated one hundred thirty (130) TDR's. The parties further agree that BOCA is entitled to one dwelling unit for each unit in existence, pursuant to Monroe County Code, Sec. 9.5-268.

2.2. **Vesting of ROGO-Exempt Units and Nutrient Credits.** The parties agree that the Seahorse property is vested for one hundred thirty (130) market rate, ROGO-exempt equivalent dwelling units.

2.3. Allocation of ROGO-Exempt Equivalent Dwelling Units. One hundred ten (110) TRE's shall be retained by BOCA. Remaining TRE's after completion of the development contemplated by this Agreement on the Receiver Site may be transferred to any site owned by BOCA at BOCA's discretion within the upper Keys provided that the units are not transferred to Tier I, A Special Protection Area that requires clearing or to any area that would have received negative environmental points if evaluated under the Monroe County Building Permit Allocation system, effective at the date of the execution of this agreement. Twenty (20) TRE's shall be donated to Monroe County and shall be used pursuant to Paragraph 2.5(a) below.

2.4. Allocation of TDR's. Thirty (30) TDR's shall be retained by BOCA and transferred to the Receiver Site to be used for the development described herein. Forty (40) will be maintained by BOCA for future use. The remaining TDR's associated with the development shall be donated to the County.

2.5. Development of Seahorse Property. The Seahorse Property will be developed as follows:

a. Utilization of 20 ROGO-exempt, Market-Rate Units. BOCA shall donate 20 Market-Rate TRE's to Monroe County for use as a public benefit on Big Pine and/or No Name Key.

b. Construction of Affordable Housing. BOCA is willing to construct or cause to be constructed, at cost for Monroe County, up to a thirty nine (39) unit affordable housing complex utilizing thirty nine (39) affordable ROGO allocations. The development shall include using the existing waste water treatment facility, existing laundry facility, and development of various amenities.

c. Restoration of Sands Corridor & Restrictive Covenant. BOCA shall restore or cause to be restored a ninety-five thousand, one hundred eighty-two (95,182) square foot area of the Seahorse property to fortify the Sands migration Corridor for use by the Florida Key Deer and other threatened and endangered species. Upon transfer of the development rights and ROGO exemptions, a conservation easement shall be placed

upon the proposed deer corridor prohibiting further development. The property constituting the conservation easement shall yield seventy (70) of the TDR's discussed in Paragraph 2.5 above. No units shall be eligible, other than affordable housing units, to be transferred into the Seahorse Mobile Home property.

d. Donation of Seahorse Property. Upon completion of construction, BOCA will donate the land associated with the affordable housing construction; and conservation easement portion of the Seahorse Property for the mitigation that is required annually for the harvest of deer as required by the incidental take permit issued for the Florida Key Deer.

e. Existing Residents. Relocation and/or demolition of existing trailer units will be addressed on a case by case basis.

f. Waiver of Fees. All permitting fees and impact fees associated with the Seahorse affordable housing development will be waived.

2.6 Development of Receiver Site

a. Zoning & FLUM Amendments. Monroe County staff and BOCA have reviewed the potential zoning classifications and FLUM designations for the Receiver Site. Boca Developer's will submit an application to Monroe County to rezone the Receiver Site to Urban Residential and a Future Land Use Map amendment to Residential High (collectively, the "Applications"). Boca Developers understands that Monroe County's Planning & Zoning Board and the Monroe County Board of County Commissioners retain full discretion to deny or approve the Applications.

b. Conditional Use Approval & Site Plan Approval. BOCA's Conditional Use Approval and Site Plan Approval ("Development Plans") for the Sender and Receiver Site are subject to approval by Monroe County and approval will not be

unreasonably withheld. BOCA understand that Monroe County retains full discretion to deny or approve the Development Plans.

c. TRE's. BOCA shall utilize eighty (80) of its TRE's from the Seahorse Property for development of the Receiver Site.

d. TDR's. The parties agree that the transfer of thirty (30) TDR's to the Receiver Site shall result in an allowable density of eighty (80) on the Receiver Site. Upon execution of the conservation easement, BOCA shall utilize thirty (30) of its TDR's from the Seahorse Property to complete the required number of TDR's for development of the Receiver Site.

e. Marina. The Receiver Site shall include a public access pump-out station. Five (5) percent of the docks at the marina shall be available for rent to the general public.

f. Monument Sign/Sculpture. BOCA shall cause to be constructed a monument sign/sculpture to be placed in the median of Overseas Highway welcoming visitors to the Florida Keys and Key Largo.

g. Landscaping. BOCA shall cause to be constructed landscaping in the median on Overseas Highway in Key Largo in a length to be mutually agreed upon between the County and BOCA, but in no event shall the length exceed six hundred (600) feet.

h. Pump Station. BOCA shall coordinate and cause to be constructed, in conjunction with the Key Largo Wastewater District, a pump station to be located on Overseas Highway in Key Largo at an approximate cost of \$50,000 to be borne by BOCA.

2.6 Nutrient Reduction Program. The TRE's that are proposed to be removed are exempt from the Nutrient Reduction Program.

2.7 Final, Non-Appealable Approvals. This Agreement is contingent upon BOCA receiving final, non-appealable approvals for every application, development approval, development order, and/or development permit required to complete BOCA's proposed developments that are considered by this Agreement. Should BOCA fail to receive final, non-appealable approvals for any aspect related to its developments, this Agreement shall terminate with no further action required of any party.

2.8 Final C.O.. BOCA agrees that it shall not be issued a Final Certificate of Occupancy until the completion of the construction required by Paragraph 2.5(b) above.

3. **Construction of the Agreement.** The parties hereto have entered into this Section 380.032 agreement in recognition of the unique circumstances applicable to the Property, and in consideration of the public benefits to be obtained through the contribution of property that can be used to preserve workforce housing stock; restoration of Florida Key Deer habitat; contribution of Habitat value to contribute to Habitat Conservation Plan land acquisition requirements; and enhancement of public waterfront facilities. Accordingly, this Section 380.032 Agreement should not be construed as establishing precedent or procedure for any other development application.

4. **General Provisions.** The County will not take any official action through its agents or employees which would contravene, interfere with or alter any provision in this agreement.

5. **Authorized Signatures.** The Board of County Commissioners of Monroe County, or its authorized designee, shall execute this Section 380.032 Agreement on behalf of the County following approval of this Agreement by the Board of County Commissioners. The Director of the Division of Community Planning, or his/her authorized designee, shall execute this Agreement on behalf of DCA. BOCA shall execute this Agreement by its duly-authorized officer.

6. **Entirety of Agreement.** The County, DCA and BOCA further agree that this Section 380.032 Agreement contains the entire and exclusive understanding and agreement among the

parties and may not be modified in any manner except by an instrument in writing and duly signed by the County, DCA and ORC.

7. **Duplicated Originals.** This Section 380.032 Agreement may be executed in any number of originals, all of which evidence one agreement, and only one of which need be produced for any purpose.

8. **Enforcement.** In the event of a breach of this Section 380.032 Agreement, or failure to comply with any condition of it, the County, DCA and BOCA may enforce this Agreement pursuant to §§ 380.05 and 380.11, *Florida Statutes*, or as otherwise provided by law.

9. **Scope of Authority.** This Section 380.032 Agreement affects the rights and obligations of the County, DCA and BOCA as provided under the terms herein and Chapter 380, *Florida Statutes*. This Section 380.032 Agreement is not intended to influence or determine the authority or decisions of any other state or local government or agency in issuance of any other permits or approvals that might be required by state law or local ordinance for any development authorized by this Agreement except as otherwise provided herein.

10. **Effective Date.** This Agreement shall take effect upon signature of the last of the parties to sign this Agreement.

IN WITNESS WHEREOF, the parties by and through their respective undersigned duly authorized representatives have executed this Agreement on the dates and year below written.

COUNTY OF MONROE

BOCA DEVELOPERS,
LLC

DCA

County Manager

by: _____, its
Manager

Director Division of
Community

Date signed

Date signed

Date signed

Exhibit A

LEGAL DESCRIPTION:

TRACTS 1 AND 2, HIGHLAND SHORES, ACCORDING TO THE PLAT THEREOF; AS RECORDED IN PLAT BOOK 3, PAGE 39 OF THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA.

TOGETHER WITH THE FOLLOWING 2 PARCELS OF SOVEREIGN LAND FURTHER DESCRIBED AS FOLLOWS:

PARCEL "A"
A PARCEL OF SOVEREIGN LAND LYING WESTERLY OF AND ADJACENT TO TRACT 1, HIGHLAND SHORES ON KEY LARGO, ACCORDING TO THE PLAT THEREOF, RECORDED IN PLAT BOOK 3, AT PAGE 39 OF THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA. SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE NORTHEASTERLY RIGHT-OF-WAY OF STATE ROAD NUMBER 5, U.S. HIGHWAY NO. 1, AND THE NORTHERLY PROPERTY LINE OF TRACT 1 ACCORDING TO SAID PLAT, RUN S89°04'36"W, 773.50 FEET MORE OR LESS TO A POINT ON THE ORIGINAL SHORELINE OF BLACKWATER SOUNDS, SAID POINT BEING THE POINT OF BEGINNING OF THE DESCRIPTION OF PARCEL A. FROM SAID POINT OF BEGINNING, RUN N72°51'52"W, 9.95 FEET ALONG THE SOUTHERLY BOUNDARY OF THE TRUSTEES OF THE INTERNAL IMPROVEMENT FUND DEED NUMBER 22,017. THENCE FOLLOW THE BOUNDARY OF SAID PARCEL A FOR THE FOLLOWING TWENTY-SEVEN (27) COURSES:

Exhibit B

LEGAL DESCRIPTION:

LOTS 1 THROUGH 5, BLOCK 1 AND LOTS 1 THROUGH 18, BLOCK 2, SAM-N-JOES SUBDIVISION, ACCORDING TO THE PLAT THEREOF; AS RECORDED IN PLAT BOOK 3, PAGE 76 OF THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA.

TOGETHER WITH:

LOTS 1 THROUGH 9, BLOCK 3, DARIO'S SUBDIVISION, ACCORDING TO THE PLAT THEREOF; AS RECORDED IN PLAT BOOK 3, PAGE 92 OF THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA.

CONTAINING 170,982 SQUARE FEET OR 3.93 ACRES, MORE OR LESS.